



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R04-OAR-2021-0363; FRL-10016-02-R4]

Air Plan and Operating Permit Program Approval;

TN; Electronic Notice (e-notice) Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of changes to the Tennessee State Implementation Plan (SIP) and the Tennessee title V operating permit program (title V) submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Division of Air Pollution Control on March 23, 2021, and supplemented on July 1, 2022. These changes address the public notice rule provisions for the New Source Review (NSR) and title V programs of the Clean Air Act (CAA or Act) by providing for electronic notice (e-notice) and removing the mandatory requirement to provide public notice of a draft air permit in a printed newspaper. EPA is approving these changes as they are consistent with the CAA and implementing federal regulations.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0363. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. LaRocca can be reached via telephone at (404) 562-8994 and via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 2016, EPA finalized changes to the public notice provisions for the NSR, title V, and Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). These rule changes removed the mandatory requirement to provide public notice of permitting actions through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and title V rules, such as Tennessee's EPA-approved permitting programs. Permitting authorities are not required to adopt e-notice, however, nothing in the revised rules prevents a permitting authority with an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. For permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use "a consistent noticing method" for all permit notices under the specific permitting program. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit for the duration of the public comment period.

Through a notice of proposed rulemaking (NPRM), published on July 25, 2022, EPA proposed to approve changes to Tennessee’s Rule 1200-03-09-.01, *Construction Permits*; and Rule 1200-03-09-.02, *Operating Permits*, of Chapter 1200-03-09, *Construction and Operating Permits*, as submitted by TDEC on March 23, 2021. *See* 87 FR 44076. These changes establish a revised method of publication of public notices for public hearings and public comment periods and change how documents related to permit proceedings will be available for public inspection. Additional details on Tennessee’s March 23, 2021, SIP revision, as well as EPA’s analysis of the changes, can be found in the July 25, 2022, NPRM. Comments on the July 25, 2022, NPRM were due on or before August 25, 2022. No adverse comments were received on the July 25, 2022, NPRM, so EPA is now finalizing the approval of the changes as proposed.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, and the July 25, 2022, NPRM, EPA is finalizing the incorporation by reference of Rule 1200-03-09-.01, *Construction Permits*, state effective January 21, 2021, into the Tennessee SIP.¹ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.²

III. Final Action

¹ EPA is not incorporating the January 21, 2021, state effective version of certain provisions of 1200-03-09-.01 identified below in the amended Explanation column of the SIP table at 40 CFR 52.2220(c).

² *See* 62 FR 27968 (May 22, 1997).

As described in the July 25, 2022, NPRM, EPA is approving the changes to Chapter 1200-03-09, *Construction and Operating Permits*; Rule 1200-03-09-.01, *Construction Permits* of the Tennessee SIP; and Rule 1200-03-09-.02, *Operating Permits*, of the Tennessee title V program, as submitted on March 23, 2021, and supplemented on July 1, 2022.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of

this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 23, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR – Tennessee

2. In § 52.2220(c), amend Table 1 by revising the entry for “Section 1200-3-9-.01” to read as follows:

§52.2220 Identification of plan.

* * * * *

(c) * * *

Table 1 - EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*

Section 1200-3-9-.01	Construction Permits	1/21/2021	[Insert date of publication in the FEDERAL REGISTER], [Insert citation of publication]	Except for 1200-03-09-.01(1)(a), (1)(d), (1)(f), (4)(b)24(i)(XVII), (4)(b)29, (4)(b)47(i)(IV), (4)(j)3, (4)(k), (5)(b)1(x)(I)(VII), and (5)(b)2(iii)(II), which have a state effective date of 4/24/2013; 1200-3-9-.01(1)(j), which is not incorporated into the SIP; and the PM _{2.5} SILs (found in 1200-3-9-.01(5)(b)1(xix)) and the SMC (found in 1200-3-9-.01(4)(d)6(i)(III)) provisions, as promulgated in the October 20, 2010, PM _{2.5} Increments-SILs-SMC Rule.
**	**	*	*	*

* * * * *

PART 70 – STATE OPERATING PERMIT PROGRAMS

3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

4. Amend appendix A to part 70 by adding paragraph (a)(3) under the heading for “Tennessee” to read as follows:

Appendix A to Part 70 - Approval Status of State and Local Operating Permits Programs

* * * * *

Tennessee

(a) * * *

(3) Revisions to Rule 1200-03-09-.02, *Operating Permits*, of the Tennessee title V program, submitted on March 23, 2021, and supplemented on July 1, 2022, with a state effective date of January 21, 2021, to allow for electronic notice of operating permits, are approved on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

* * * * *

[FR Doc. 2022-21235 Filed: 9/29/2022 8:45 am; Publication Date: 9/30/2022]